

No. 9/5/846-Lab./8546.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Sonapat Co-operative Sugar Mills Ltd., Sonapat :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 114 of 81

between

SHRI AJIT SINGH, WORKMAN AND THE MANAGEMENT OF M/s. THE SONEPAT CO-OPERATIVE SUGAR MILLS LIMITED, SONEPAT.

Present :—

Workman in person.

Shri Bhagat Singh, L.A., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Ajit Singh and the management of M/s. The Sonapat Co-operative Sugar Mills Limited, Sonapat, to this Court for adjudication,—vide Labour Department Gazette Notification No. ID/SPT/71/80/39560, dated 31st July, 1980 :—

Whether the termination of services of Shri Ajit Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The case of the workman is that he was appointed as Legal Assistant on permanent basis and his candidature was sponsored by the Employment Exchange and letter of appointment, dated 27th September, 1978 was issued to him and the applicant joined his services on 28th September, 1978 and that his services were retrenched w.e.f. 9th February, 1980 with the *mala fide* intention to appoint some other person in his place and that his retrenchment contravenes the provisions of section 25F and 25G of the Industrial Disputes Act, 1947. *Inter alia* it is pleaded that in his place Shri Vishnu Dutt was appointed as part-time Legal Assistant on 15th February, 1980.

3. In the detailed written statement filed by the management, the preliminary pleas projected were that the applicant is not a workman as defined in section 2.S of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and as such the present reference is bad in law. On merits, the employment of the applicant as alleged is admitted but it is averred that as per his conditions of appointment, his services could be terminated rather dispensed with during the probation period without any prior notice. So, it is alleged that the termination of services of the workman was legal and proper and the same does not contravene the provisions of the said Act as alleged.

4. In the rejoinder filed by the workman, he has controverted the various pleas taken by the management.

5. On the pleadings of the parties, the following issues were settled for decision "on 29th October, 1980:—

1. Whether the applicant does not fall under the definition of workman (OPM).
2. Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

6. The management in all examined two witnesses, MW-1 Shri Sahib Singh Dahiya, Assistant Cane Accountant and MW-2 Shri Krishan Lal, P.A.-cum-Steno to the Managing Director. The workman appeared as his own witness as WW-1.

7. At this stage, it may be mentioned that issue No. 1 was decided in favour of the workman by my learned predecessor Shri B. L. Dalal,—vide his interim order dated 24th September, 1982. My findings on issue No. 2 are as under :—

8. Appointment letter issued in favour of the workman, Photo copy which Ex. MW-1 is dated 27th September, 1978. The workman joined his services on 28th September, 1978 as per stipulation in the letter of appointment his initial period of probation was one year, which could be extended further by one year by the respondent but the respondent choose to extend the period of probation for two months only,—vide its letter Ex. MW-2/1 dated 23rd October, 1979, w.e.f. 28th September, 1979. The management issued another

letter to the workman on 23rd/24th January, 1980 Ex. MW-2/3 intimating him that since the Board of Director have decided to abolish the post of Legal Assistant in the respondent mill at the close of the current crushing season, so, the services of the workman will not be required after that. Copy of the order of termination is Ex. W-1. The same is dated 9th February, 1980. All these facts are undisputed. That would mean that the workman was in the employment of the respondent right from 28th September, 1978, 9th February, 1980 and his tenure was definitely more than one year on the date of his termination. The learned Authorised Representative of the respondent/management tried to bye-pass the provisions of section 25-F of the said Act by arguing that since there was a stipulation in the letter of appointment issued to the workman that his services could be dispensed with without prior notice during the period of probation, so, the workman cannot press into service the provisions of section 25-F of the said Act. In my opinion, the contention is absolutely proteusque and fanciful. The same runs counter to the settled position of law handed out in many authorities of various High Court and the Hon'ble Supreme Court of India. In that behalf a reference can be made to A.I.R. 1983 S.C. 1320 *The Management of Karnataka State Road Transport Corporation, Bangalore v/s. M. Boraiah and another*. The observation made in this authority in para number 13 can be extracted with advantage :—

“Once the conclusion is reached that retrenchment as defined in Section 2(00) of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of Section 25-F of the Disputes Act had not been complied within these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of Section 25-F of the Disputes Act in a case where it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed. There would be one set of costs. Consolidated hearing fee is assessed at Rs. 5,000.”

Other authorities cited on behalf of the workman on this point were A.I.R. 1960 S.C. 610 *State of Bombay and another, 1977 (I) LLJ Page 1, Hindustan Steel Ltd. v/s. State of Orissa and others*, 1975 (II) LLJ 499 *Udaipur Mineral Development Syndicate (P) Ltd. v/s M. P. Dave and others* and AIR 1980 S.C. 1219 *Santosh Gupta v/s. State Bank of Patiala*. So, there is no escape from the conclusion that in the process of terminating the services of the workman, the respondent did not comply with the provisions of Section 25-F of the said Act and as such his termination /retrenchment was void *abinitio* and can not be sustained.

9. The learned Authorised Representative of the respondent tried to wriggle out of this unhappy position by arguing that the respondent was constrained to dispense with the services of the workman because no post of Legal Assistant was provided in the respondent mill by the Haryana State Federation of Co-operative Sugar Mills Ltd., Chandigarh an apex Authority which controls the functioning of the respondent mill and its staffing patron. Be that it may be so, the respondent could not dispense with the services of the workman in a summary manner it did, without complying with the provisions of section 25-F of the said Act and so, the order of termination is held to be illegal and void *abinitio*. The *mala fide* nature of order of termination is also apparent from the fact that immediately after dispensing with the services of the workman, the respondent mill choose to employ the services of Shri Vishnu Dutt, though on part time basis and this was done, as alleged by the workman just to benefit a favourite of the respondent. I shall refrain passing any observations about the circumstances under which the services of Shri Vishnu Dutt were employed by the respondent but suffice it to say that the conduct of the respondent was most unbecoming in that behalf. So, this issue in its entirety is answered in favour of the workman.

10. A passing reference can be made to the objection taken by the learned Authorised Representative of the respondent that with the coming into force of the Haryana Co-operative Societies Act, 1984 w.e.f. 15th October, 1984, the jurisdiction of this Court stands barred from adjudicating upon the controversy in hand. He made a pointed reference to sections 102 and 128 of the said Act. This contention too is meritless, because this Act came into force on 15th October, 1984 and was not given retrospective operation, though it is still a moot point as to whether the provisions of this Act will over ride the provisions of the Industrial Disputes Act, 1947.

11. Now the question of back wages crops up. Ordinarily when an order of termination/retrenchment is removed, full wages are awarded but in exceptional circumstances, Court can make a departure from the accepted principles. Though the circumstances can be many and varied and it is difficult to pin point the same. In the present case the workman is a practising advocate at Sonapat. It is difficult to believe that he may not be earning anything while being at the Bar. It is a common knowledge that most of the Co-operative Sugar Mills in the State of Haryana are in the red. So, taken into consideration the totality of circumstances, I order that the workman shall be reinstated forthwith with continuity of service and he is awarded 50 per cent of back wages. The reference answered and returned accordingly. There is no order as to costs.

Dated the 13th November, 1984.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat.

Endst. No. 114/81/3642, dated 22nd November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat.

No. 9/5/84-6Lab/8547.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s The Haryana Development Co-operative Federation Ltd., Gohana Road, Milk Plant, Rohtak :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT,  
ROHTAK

Reference No. 40 of 1982.

SHRI DILAWAR SINGH HUDDA, WORKMAN AND THE MANAGEMENT OF M/S THE HARYANA  
DEVELOPMENT CO-OPERATIVE FEDERATION LTD., GOHANA ROAD, MILK PLANT,  
ROHTAK

Present:—

Shri S.N. Vats, A.R. for the workman.

Shri K.L. Nagpal, A.R. for the respondent.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Dilawar Singh Hudda and the management of The Haryana Development Co-operative Federation Ltd., Gohana Road, Milk Plant, Rohtak to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/RTK/98/81/6437, dated 9th February, 1982:—

Whether the termination of service of Shri Dilawar Singh, was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed with the respondent since the month of October, 1977 (wrongly mentioned as 10th October, 1981 in the demand notice) but his services were terminated unlawfully on 1st May, 1981 in flagrant disregard of section 25-F of the Industrial Disputes Act, 1947.

3. In the detailed reply filed by the management, the claim of the workman has been controverted *in toto*. It is pleaded that the workman had actually worked for less than 240 days with the respondent during the last 12 calendar months as laid down in section 25-(b) of the Industrial Disputes Act, 1947. (hereinafter referred to as the Act). Before the date of termination i.e. 1st May, 1981, it is alleged that the workman actually worked for only 216½ days with the respondent and as such the provisions of section 25-F of the Industrial Disputes Act, 1947 was not attracted in this case. *Inter alia*, it is pleaded that in calculating the actual working days, the period for which, the workman remained on strike, should be excluded. That period is from 18th October, 1980 to 18th January, 1981. In this context, it is alleged that the strike resorted to by the work-force of the respondent was absolutely illegal, because its union leaders were engaged in negotiating some demands of the workmen with the Managing Director of the respondent but in spite of that without waiting for the outcome of the negotiation, the workman resorted to strike, though the management display a notice on 18th October, 1980 asking the workman to resume their duty, failing which, their services will be terminated. But the response of the workman was not responsible and as such his services were terminated on 4th November, 1980 but in spite of that, the management allowed the workman to resume his duties on 19th January, 1981 and the workman was ordered to be treated on *denovo* appointment and he was not paid wages for the period of strike. On the basis of these allegations, it is alleged that if the period of strike is excluded, the workman had not actually worked for 240 days with the respondent in the last 12 calendar months and as such he cannot avail of the benefit of the provisions of section 25-F of the said Act.

4. In the replication, filed by the workman, he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issue was framed for decision on 26th July, 1982:—

Whether the termination of services of the workman was justified and in order? If not, to what relief is he entitled?

6. The management examined 4 witnesses. MW-1 is Shri O.P. Sahney, MW-2 Shri R.P. Chillar, MW-3 Shri Krishan Lal, Time Keeper and MW-4 is Shri G.P. Mathur, General Manager of the respondent. On the other hand, the workman examined Shri O.P. Bura, General Secretary of the Milk Plant Workers Union as WW-1 and himself as WW-2.

7. I have heard Shri S.N. Vats, learned Authorised Representative of the workman and Shri K.L. Nagpal, legal adviser of the respondent. My findings on the issue framed are as below:—

#### Issue No. 1—

8. The learned Authorised Representative for the workman Shri S.N. Vats vehemently contended that termination of service of the workman was 'retrenchment' within the meaning of that expression in section 2(00) of the said Act, since he did not fall in any of the 3 excepted cases mentioned in the said section and since there was 'retrenchment' it was bad for non-compliance with the provisions of section 25-F of the said Act. On the other hand, the learned legal adviser of the respondent contended that since the workman had not actually worked for 240 days during the last 12 calendar months with the respondent, as is evident from the duty chart Ex. MW-3/1 duly proved by Shri Krishan Lal Time Keeper, MW-3, the workman cannot bank upon the provisions of section 25-F of the said Act. It is common case of the parties that there was strike in the respondent plant for the period 18th October, 1980 to 18th January, 1981. It is also not disputed by the workman that the entire labour force of the respondent was on strike during this period. It is also undisputed that wages for this period were not paid to the duty workman, probably they were not claimed by him. So, the learned legal adviser for the respondent contended that if the strike period is excluded while computing the number of working days, the workman has definitely worked for less than 240 days during the last 12 calendar months. If this period is included, then the workman has definitely put in more than 240 days of work with the respondent. In this very context he contended that the case of the workman falls under section 25(b)(2) of the said Act and not under section 25(b)(1) as argued by the learned Authorised Representative for the workman. Section 25(B)(1) and 25(B)(2) can be reproduced hereunder for ready reference:—

25 B. for the purpose of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

9. Shri Nagpal, Authorised Representative for the respondent pressed into service many grounds in support of his contention that the strike resorted to by the workman was illegal and unjustified. He made a pointed reference to the Managing Director letters, dated 30th September, 1980 and 1st October, 1980. Ex.MW-1 and MW-2 inviting representatives of the workers union for negotiation and also requesting the workmen not to resort to strike and further that no attempt was made by the workman to refer the dispute to the Labour-cum-Conciliation Officer was required under section 12 of the said Act and also that there is no evidence on record to show that the workman ever approached the Government of Haryana for referring their grievances as an industrial dispute to the Industrial Tribunal as envisaged under section 10 of the said Act. It is further contended that since the workman did not claim his wages for the strike period, so, there is no escape from the conclusion that the workman accepted the strike period as absence from duty and further more no demand of the workman was conceded by the management after the workman had resumed his duty after strike period. On the basis of the points discussed above, Shri K.L. Nagpal contended that the strike resorted to by the work-force of the respondent including the workman was illegal and unjustified and as such, the period of strike should be excluded for computing the number of working days. The aggrieved workman actually worked with the respondent during the last 12 calendar months. In that behalf Shri Nagpal referred to 1979 Lab I.C. 1079, Punjab and Haryana and AIR 1960 S.C. 902. The observations made in this authority are on peripheral points and are not exactly applicable to the controversy in hand. Firstly the strike resorted to by the work-force of the respondent was not declared illegal by the Government of Haryana. So, assuming that the strike was illegal, even then participation in an illegal strike may not necessarily and in every case be punished with dismissal without proper enquiry being held. I am fortified in making these observations from the law laid down in AIR S.C. 1158, Bata Shoe Co. (P) Ltd. vs. G.N. Gunguly and others. Another authority which can be referred with advantage was reported in AIR 1960 S.C. 219 India General Navigation and Railway Co. Ltd and another vs. their Workmen. In this authority their Lordships of the Hon'ble Supreme Court observed that assuming it is open to the management to dismiss a workman who has taken part in an illegal strike, in determining the question of punishment, a clear distinction has to be drawn between those workmen, who not only joined in such strike, but also took part in obstructing the loyal workmen for carrying on their work or took part in violent demonstrations. In the present case there is not an iota of evidence on record that the aggrieved workmen resorted to any violence during the strike period or he in any way obstructed any loyal workman from carrying on his work. The punishment of dismissal can be meted out after proper enquiry by the management, in case, the strike had been declared illegal. In the present case the strike resorted to by the work-force of the respondent was not declared illegal by the Government of Haryana. So, various contentions raised on behalf of the respondent are absolutely unfounded. Since the controversy in hand is being decided primarily on accepted facts, so I need not discuss the oral evidence adduced by the parties. So, I find that the aggrieved workman had put in more than 240 days actual work with the respondent on the dated his services were terminated and as such his termination was in cross violation of the provisions of section 25-F of the Industrial Disputes Act, 1947, because no notice or retrenchment compensation was given to him. So, the order of termination of the workman is held to be illegal and void *ab initio*. The law is settled that removal of order of terminating the services of the workman must necessarily lead to reinstatement, as if the order has never been and so it must ordinarily lead to back wages to. But there may be exceptional circumstances which made it impossible or wholly inequitable *vis-a-vis* the employer and the workman to direct reinstatement with full back wages. It is a common knowledge that the Milk Plants in Haryana are always in the red and reasons for the same may be many. All the Milk Plants in Haryana are in financial doldrums and as such, it will not be equitable to award full back wages to the workman. Such a prayer was also made by the Legal Adviser of the respondent during the course of arguments. So, taking into consideration the totality of circumstances, I order for the reinstatement of the workman with continuity of service and 25% back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 5th November, 1984.

B.P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

Endst. No. 40/82/3629, dated 22nd November, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.